

REMARKS

Claims 10-29 stand finally rejected on the same grounds presented in the prior non-final office action. Based on the following remarks, applicants request reconsideration of the rejection in order to avoid unnecessary expense associated with an appeal. Applicants also present the above amendment to claim 28 to correct a grammatical error of an apparent nature and thereby place this application in better condition for allowance or appeal. This amendment does not affect claim scope and creates no new issues.

REQUEST TO REMOVE REJECTIONS UNDER SECTION 102

All of the claims 10 – 29 have again been rejected under Section 102 based on the Modeste reference (US 2003/0056012). Despite argument and distinctions made of record in the Response filed on July 11, 2007, the grounds of rejection appear identical to those presented in the prior non-final office action. Now, in the Final Office Action, the Examiner presents in the Response to Arguments an unfounded and incorrect basis for disagreeing with the patentable distinctions previously argued by the applicants. Applicants request that the Examiner consider the following remarks and make a new determination with regard to patentability. The Examiner's efforts to fully reconsider the applicants' argument will be appreciated, as this can result in a more efficient path to complete examination of the application, to the benefit of both the Patent Office and the applicants.

It is respectfully submitted that the Examiner's most recent response to applicants' arguments confirms that the basis for the rejection fails to comply with the express requirements set forth under Section 102. MPEP §2131 provides that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as contained in the claim. Specifically, in order to so reject independent claim 10 it is necessary to identify in one prior art reference all of the features as they are expressly claimed by the applicants. Accordingly, applicants traverse all of the claim rejections first on the basis that the

rejection of claim 10 under 35 USC 102(b) is in error and that all other claims depend there from. The cited prior art Modeste reference fails to disclose each and every element as set forth in the independent claim 10. The dependent claims further distinguish the invention.

The Examiner's response to applicants' argument is as follows. Although applicants argue that "Modeste teaches that [sic] an automation controller 60 separate and distinct from the gateway 30 ... [t]he examiner disagrees ... that Modeste does not teach automation functionality is within a software module of the web server [because] [t]he examiner interprets a web server is a combination of C-Gateway (element 30) and C-Automation Controller (element 60) as the automation system that provide[s] automation control over the home devices."

To make this rejection the Examiner uses undue discretion to redefine and blur the distinction between two distinct and well-known components. A server is a server and a controller is a controller. The mere fact the Modeste reference discloses a controller connected to the gateway 30 does not make that controller part of a server. The Examiner may not have noticed the convention used in the Modeste reference wherein components which are part of the gateway are clearly illustrated as being in the same schematic box used to denote the gateway 30. See, for example, Figure 2A and Figure 5 of Modeste which each illustrate another controller 100 (not the claimed invention) which is inside of the schematic box used to define the gateway 30. With this conventional method of illustration, there is no basis to argue that the automation controller 60 is part of the gateway 30. Rather, in order to make the rejection, it has been necessary to over reach and blur the prior art distinction which segregates two functions: a server function and the function of an automation controller.

Furthermore, in making the rejection, the Examiner has not fully accounted for the claimed software module. Apparently, the Examiner assumes that such a module is in the controller (which is not part of a server). Again, MPEP §2131 provides that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

Furthermore, independent claim 10 presents additional subject matter which cannot be read upon the prior art: one of the software modules of the server "comprises a first mechanism for implementing an automation functionality ..." Moreover, claim 10 also requires that the "one" software module also includes a "second mechanism for accessing a real-time operating system." In this regard the Modeste reference must be deficient because, even if the claim could

be read upon the Examiner's combination of a server and a separate controller, applicants' claimed first and second mechanisms would not be found in the "one" software module as required by claim 10.

The rejection cannot be properly supported because it requires undue discretion to redefine, i.e., reconstruct, the reference in order to create the claimed invention. It is only the applicants who teach the combination of claim 10. Embodiments according to the invention result in a web server having its functionality expanded in such a manner (e.g., with the claimed software module) that the server can handle both complex functions associated with classical automation engineering and lesser tasks such as those useful in the consumer sector. As previously urged, the referenced arrangement of Modeste is no more relevant to the patentability of applicants' claims than is the very art already cited by the applicants. It is only the applicants who teach direct integration of automation functionality into a web server and the prior art disclosure of Modeste is illustrative of prior art that is consistent with this distinction.

Figure 1 of the Modeste reference is inconsistent with the claimed invention because it expressly shows an automation controller 60 separate and distinct from the gateway 30. The Examiner does not have the discretion to reconstruct the reference by "redefining" an automation controller to become part of a server. This is made even more questionable because, as stated at par. [0036] of the Modeste reference, the "gateway 30 is coupled over an RS232 data link to a home automation controller 60 ..." This is clearly different from applicants' arrangement wherein the claimed "automation functionality" is within a software module of the web server instead of being, for example, in a separate controller coupled to a server through an RS-232 interface. Only applicants' claimed software module having "automation functionality" is within the server 3.

CONCLUSION

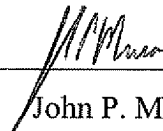
Based on the foregoing distinctions it is submitted that the rejection is in error and the claims are neither anticipated by nor obvious in view of the prior art. The Examiner is again requested to enter this amendment because it creates no new issues and places the application in better condition for allowance or appeal. The Commissioner is hereby authorized to charge any

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appropriate fees due in connection with this paper, including the fees specified in 37 C.F.R. §§ 1.16 (c), 1.17(a)(1) and 1.20(d), or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

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